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IN THE

Supreme Court of the United States

October Term, 1963
No. 95

SAMUEL DODD WILLIAMSON,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR REHEARING

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PEOPLE OF THE STATE OF CALIFORNIA,

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PETITION FOR REHEARING.

Petitioner prays that this Court grant rehearing of its order of June 22, 1964 denying the petition for writ of certiorari, Mr. Justice Douglas being of the opinion that certiorari should be granted; that a writ of certiorari issue to review the judgment of the District Court of Appeal, Second Appellate District, Division 2, State of California, in the above-entitled cause as prayed for in the petition filed March 20, 1963 herein; and that upon such rehearing, the said aforesaid judgment be vacated and remanded to the said District Court of Appeal, Second Appellate District, Division 2, State of California, for consideration in light of the decision in *Zeitlin v. Arnebergh*, 59 A. C. 930, 383 P. 2d 152, 31 Cal. Rptr. 800, decided July 2, 1963, and the decisions in *Jacobellis v. Ohio*, October Term, 1963, No. 11, 32 L. W. 4652, and *A Quantity of Copies of Books, et al. v. Kansas*, October Term, 1963, No. 449, 32 L. W. 4658.

Reasons for Granting Rehearing.

1. The judgment of the District Court of Appeal, Second Appellate District, Division 2, State of California was entered in the above-entitled case on September 26, 1962, and hearing was denied by the Supreme Court of the State of California on November 21, 1962. The petition for writ of certiorari to review the judgment of the court below was filed in this Court on March 20, 1963.

While the petition for writ of certiorari was pending in this Court, the California Supreme Court rendered its decision in *Zeitlin v. Arnebergh*, 59 A. C. 930, 383 P. 2d 152, 31 Cal. Rptr. 800, decided July 2, 1963. The Supreme Court held that the California obscenity statute could only be constitutionally applied to "hard core pornography" and that the book *Tropic of Cancer* did not constitute such hard core pornography. In enunciating the standards for judging the obscenity of writings and other material in the light of the requirements of the Constitution, the California Supreme Court interpreted the state obscenity statute in new terms not theretofore expressed by the Court.

While the petition for certiorari herein was pending, this Court, in the case of *Smith v. California*, October Term, 1962, No. 812, after a grant of certiorari, vacated the judgment of the state court and remanded the case to the said state court for consideration in the light of the decision in *Zeitlin v. Arnebergh*, aforesaid. (*Smith v. California*, October Term, 1963, No. 72, December 16, 1963.)[1]

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[1]Upon remand, the judgment of conviction in *Smith v. California*, was reversed and the action dismissed. Appellate Department, Superior Court, Los Angeles County, California, CR. A-5113, January 20, 1964.

However, the petition for certiorari in the case herein which, it is submitted, raises similar questions to those involved in *Smith v. California* and which also merit reconsideration by the state court, was not acted upon by this Court in the October 1962 term but was carried over to the October 1963 term.

2. The decision of the California Supreme Court in *Zeitlin v. Arnebergh*, 59 A. C. 930, 383 P. 2d 152, 31 Cal. Rptr. 800, decided July 2, 1963, marked the first time that the state obscenity statute was construed as encompassing no more than "hard core pornography". For the first time, the California Supreme Court held that only "hard core pornography" is without the protection of the constitutional guaranties of freedom of speech and press secured by the provisions of the First and Fourteenth Amendments to the United States Constitution. The Court also held that a writing or other material cannot be condemned as obscene unless it is utterly without redeeming social importance, deciding at the same time that the word "redeeming" refers not to a balancing of pruriency against social importance of material, but rather to the presence of matters of social importance in the content which will recover for the material its position as constitutionally protected utterance.[2]

The court below in the above-entitled case did not have before it the decision in *Zeitlin v. Arnebergh* and

[2]Following the decision in *Zeitlin v. Arnebergh*, the state courts have limited obscenity prosecutions solely to alleged hard core pornography, and have reversed judgments of conviction after jury trial when the material in the judgment of the court did not constitute such hard core pornography. *People v. Schackman*, Appellate Department, Superior Court, Los Angeles County, CR. A-5272, December 4, 1963.

the opportunity to consider the record herein in the light of the aforesaid decision.

3. At the time of the rendition of the judgment of the court below herein, the state courts had construed the state obscenity statute as denying appellate courts the power to exercise an independent constitutional judgment as to the alleged obscenity of the charged material. *People v. Smith,* Appellate Department, Superior Court, County of Los Angeles, CR. A-5113, *People v. Harris,* 192 Cal. App. 2d Supp. 887, 13 Cal. Rptr. 642, 646-647 (1961). In *Zeitlin v. Arnebergh,* 59 A. C. 930, 383 P. 2d 152, 31 Cal. Rptr. 800, decided July 2, 1963, the California Supreme Court held that "the reviewing court must make an *independent examination* of the whole record in cases involving the constitutional issue of free speech". *Zeitlin v. Arnebergh, supra,* 31 Cal. Rptr., at 805.

4. In *Jacobellis v. Ohio,* October Term, 1963, No. 11, 32 L. W. 4052, this Court held that in reviewing a criminal conviction under a state obscenity statute challenged under the due process clause of the Fourteenth Amendment, the proper standard for determining the constitutional status of such an allegedly obscene work must be determined on the basis of a national standard. This Court stated that no "local" definition of "community" could properly be employed in delineating the area of expression that is protected by the Federal Constitution.

The state court below did not address itself to this very central question, and it is submitted it would be most appropriate for the state court, instead of courts in the federal jurisdiction, to first have the opportunity

to reexamine the record in the case herein in the light of this Court's decision in *Jacobellis v. Ohio.* See also, *Bell v. Maryland,* October Term 1963, No. 12, 32 L. W. 4664.

Conclusion.

For the reasons set forth above, it is respectfully urged that rehearing be granted and that, upon such rehearing, the petition for writ of certiorari herein be granted, the judgment of the court below vacated and the case remanded to the state court below for reconsideration in the light of the decisions in *Zeitlin v. Arnebergh, Jacobellis v. Ohio* and *A Quantity of Copies of Books, et al. v. Kansas.*

Respectfully submitted,

STANLEY FLEISHMAN,
Counsel for Petitioner.

Of Counsel:
SAMUEL ROSEWEIN.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

STANLEY FLEISHMAN,
Counsel for Petitioner.